

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 431

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; PROHIBITING A LAW ENFORCEMENT
AGENCY FROM COLLECTING INFORMATION ON THE POLITICAL, RELIGIOUS
OR SOCIAL ASSOCIATIONS OR ACTIVITIES OF A PERSON THAT DOES NOT
DIRECTLY RELATE TO INVESTIGATION OF CRIMINAL CONDUCT; REQUIRING
A WRITTEN POLICY; PROVIDING FOR OVERSIGHT BY THE ATTORNEY
GENERAL; PROVIDING FOR CIVIL LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 29 NMSA 1978 is
enacted to read:

"NEW MATERIAL COLLECTION OF INFORMATION PROHIBITED--
EXCEPTIONS--OVERSIGHT--CIVIL LIABILITY.--

A. A law enforcement agency shall not collect,
maintain or share with any other law enforcement agency,
information about the political, religious or social

.174382.4

underscored material = new
[bracketed material] = delete

1 associations, views or activities of a person unless:

2 (1) the information directly relates to an
3 investigation of criminal conduct; and

4 (2) there are reasonable grounds to believe
5 that the subject of the information is involved in the criminal
6 conduct.

7 B. Information about a person's political,
8 religious or social associations, views or activities that is
9 collected or maintained by a law enforcement agency shall be
10 destroyed if:

11 (1) a criminal charge, to which the
12 information is material or directly related, is not brought
13 against the person within a reasonable period of time;

14 (2) a criminal charge, to which the
15 information is material or directly related, was brought and
16 has resulted in a dismissal, nolle prosequi or acquittal; or

17 (3) the information was collected or
18 maintained in violation of Subsection A of this section.

19 C. A law enforcement agency shall establish and
20 enforce a written policy governing the collection, maintenance
21 and destruction of information in accordance with the
22 provisions of this section.

23 D. A law enforcement agency shall provide an annual
24 report to the attorney general describing:

25 (1) all information collected, maintained or

1 shared by the agency on the political, religious or social
2 associations, views or activities of a person;

3 (2) the reasons for collecting or maintaining
4 the information;

5 (3) the alleged criminal conduct to which the
6 information relates; and

7 (4) the grounds for believing that the subject
8 of the information is involved in the criminal conduct.

9 E. The attorney general shall have access to the
10 files and records of a law enforcement agency to oversee and
11 monitor compliance with this section. The attorney general may
12 investigate citizen complaints regarding the collection,
13 maintenance or sharing of information by a law enforcement
14 agency in violation of this section.

15 F. A person may bring a civil action against a law
16 enforcement agency that has collected, maintained or shared
17 information about the person in violation of this section for:

18 (1) actual damages sustained by the person as
19 a result of the violation;

20 (2) a civil penalty in an amount not to exceed
21 ten thousand dollars (\$10,000);

22 (3) punitive damages if an agency engages in a
23 pattern of willful violation or reckless disregard of this
24 section; and

25 (4) costs of the action and reasonable

1 attorney fees.

2 G. The provisions of this section apply to a law
3 enforcement agency and its elected officials, officers and
4 employees regardless of whether an investigation or prosecution
5 is conducted in coordination with other agencies or
6 jurisdictions or whether the officers or employees are cross-
7 deputized to assist other jurisdictions.

8 H. As used in this section:

9 (1) "law enforcement agency" means a law
10 enforcement agency of the state or of a political subdivision
11 of the state that is responsible for the prevention, detection
12 and investigation of crime, the prosecution of crime or the
13 enforcement of penal, traffic or transportation laws of the
14 state and includes district attorneys and state and local
15 prosecutors. For the purposes of sharing information, "law
16 enforcement agency" includes a law enforcement agency of the
17 federal government or of any other state or political
18 subdivision of a state;

19 (2) "person" means an individual, group,
20 association, organization, corporation, business or
21 partnership; and

22 (3) "reasonable grounds" means specific and
23 articulable facts that would lead a reasonable person to
24 believe something."

25